

Remarks

Claims 1-25 are pending in the application of which claims 20-24 are withdrawn from consideration.

Claims 1-5, 7-14, 16-19 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kekki (2005/0286528) in view of Neulist et al. (2004/0208132, hereinafter Neulist).

Claims 6 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kekki in view of Neulist as applied to claims 1 and 10 above, and further in view of Verma et al. (2005/0210154).

Each of the various rejections and objections are overcome by amendments that are made to the specification, drawing, and/or claims, as well as, or in the alternative, by various arguments that are presented.

Any amendments to any claim for reasons other than as expressly recited herein as being for the purpose of distinguishing such claim from known prior art are not being made with an intent to change in any way the literal scope of such claims or the range of equivalents for such claims. They are being made simply to present language that is better in conformance with the form requirements of Title 35 of the United States Code or is simply clearer and easier to understand than the originally presented language. Any amendments to any claim expressly made in order to distinguish such claim from known prior art are being made only with an intent to change the literal scope of such claim in the most minimal way, i.e., to just avoid the prior art in a way that leaves the claim novel and not obvious in view of the cited prior art, and no equivalent of any subject matter remaining in the claim is intended to be surrendered.

Also, since a dependent claim inherently includes the recitations of the claim or chain of claims from which it depends, it is submitted that the scope and content of any dependent claims that have been herein rewritten in independent form is exactly the same as the scope and content of those claims prior to having been rewritten in independent form. That is, although by convention such rewritten claims are labeled herein as having been "amended," it is submitted that only the format, and not the content, of these claims has been changed. This is true whether a dependent claim has been rewritten to expressly

include the limitations of those claims on which it formerly depended or whether an independent claim has been rewritten to include the limitations of claims that previously depended from it. Thus, by such rewriting no equivalent of any subject matter of the original dependent claim is intended to be surrendered. If the Examiner is of a different view, he is respectfully requested to so indicate.

Statement of Common Ownership of Application and Reference

Applicants respectfully submit that the present application (U.S. Patent Application Serial No. 10/646,596) and the Neulist reference (U.S. Patent Application Publication No. 2004/0208132) were, at the time the present invention was made, owned by, or subject to an obligation of assignment to, Lucent Technologies, Inc.

Rejection Under 35 U.S.C. 103

Claims 1-5, 7-14, 16-19 and 25

Claims 1-5, 7-14, 16-19 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kekki in view of Neulist. The rejection is traversed.

35 U.S.C. §103(c) provides that “subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 ... shall not preclude patentability ... where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.” 35 U.S.C. §102(e) provides that a person shall be entitled to a patent unless “the invention was described in ... an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent”

The Neulist reference qualifies as prior art only under 35 U.S.C. §102(e). The Neulist reference is a published patent application (published on October 21, 2004) “of another” (Jakob J. Neulist and Sikander Waheed) that was filed in the United States (on April 21, 2003) before the present invention (an application directed to the present invention was filed on August 22, 2003) of the Applicants (Mojtaba Shariat and Xue Qiang Yan).

Applicants' attorney states that, at the time the present invention was made, the present application and the Neulist reference were owned by, or subject to an obligation of assignment to, Lucent Technologies, Inc., as set forth in the Statement of Common Ownership provided hereinabove.

In view of the positive Statement of Common Ownership consistent with MPEP § 706.02(l)(2) and 35 U.S.C. §103(c), the Neulist reference is not prior art for the purposes of 35 U.S.C. §103(a).

Thus, under 35 U.S.C. §103(c)(1), the Neulist reference should be disqualified as a reference under 35 U.S.C. §103(a) against the present invention because of common ownership.

Therefore, since the §103(a) rejection of claims 1-5, 7-14, 16-19 and 25 is based on a combination involving the Neulist reference, Applicants request that the rejections be withdrawn.

Claims 6 and 15

Claims 6 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kekki in view of Neulist as applied to claims 1 and 10 above, and further in view of Verma. The rejection is traversed.

This ground of rejection applies only to dependent claims, and is predicated on the validity of the rejection under 35 U.S.C. 103 given Kekki and Neulist. Since the rejection under 35 U.S.C. 103 given Kekki and Neulist has been overcome, as described hereinabove, and there is no argument put forth by the Office Action that Verma supplies that which is missing from Kekki and Neulist to render the independent claims unpatentable, this ground of rejection cannot be maintained.

Therefore, Applicants' claims 6 and 15 are allowable over Kekki and Neulist in view of Verma under 35 U.S.C. 103. The Examiner is respectfully requested to withdraw the rejection.


Conclusion

It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.

If, however, the Examiner still believes that there are unresolved issues, the Examiner is invited to call Eamon Wall at (732) 842-8110 x120 so that arrangements may be made to discuss and resolve any such issues.

Respectfully submitted,

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